



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D.C. 20536

File: EAC 99 208 53212 Office: Vermont Service Center Date:

JAN 3 2001

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The case will be remanded for further consideration and action.

The petitioner is a telephone and computer systems service. It seeks to employ the beneficiary permanently in the United States as a systems hardware analyst. The director denied the petition on June 17, 2000, stating that the petitioner had abandoned the petition by failing to respond to a request for further evidence.

8 C.F.R. 103.2(15) provides that a denial due to abandonment may not be appealed, but a petitioner may file a motion to reopen (as the director advised the petitioner in the denial notice). Pursuant to 8 C.F.R. 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. Therefore, given the grounds for denial, the petitioner has no right of appeal in this matter, and the Administrative Appeals Unit has no jurisdiction in this proceeding. We remand this matter to the director for a decision pursuant to the regulations governing motions to reopen.

We note that the record does not contain a copy of any Service request for further information. Without proof that such a request was issued, the record contains no evidence that the petitioner failed to respond to such a request. On appeal, counsel argues that the petitioner "never received any form of documentation whatsoever" and "never had a chance to respond to any notice" from the director.

ORDER: The case is remanded to the director for further action in accordance with the foregoing.